

Before the
Federal Communications Commission
Washington D.C. 20554

In the Matter of)	
)	
Telecommunications Relay Services and)	CC Docket No. 90-571
Speech-to-Speech Services)	
for Individuals with Hearing and Speech)	CC Docket No. 98-67
Disabilities)	
)	CG Docket No. 03-123
_____)	

REPLY COMMENTS OF
COMMUNICATION SERVICE FOR THE DEAF

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SUMMARY

CSD once again urges the FCC to mandate functionally equivalent video relay services (VRS) that fully meet the needs of deaf and hard of hearing communities. Congress never intended for consumers to have to choose between substandard relay services and no relay services at all. So long as all video relay services and equipment are interoperable with one another, VRS providers will be able to provide VRS around the clock, with answer speeds that rival traditional TRS.

Equally important is ensuring that the funding base for VRS and other relay services remains on solid footing. Along with wireless and landline telecommunications providers, Internet-based and cable modem service providers should be required to contribute to the support of interstate – as well as intrastate – relay services to prevent an erosion of this support. Additionally, to the extent that VRS remains under federal jurisdiction, some mechanism needs to be put in place to ensure that there is adequate monitoring and oversight of the quality of these services. The NECA TRS Interstate Advisory Council can help in this regard, as can auditing processes that confirm the veracity and legitimacy of VRS minutes submitted to NECA for reimbursement. Finally, CSD urges disallowance of VRS programs that tie rewards to minutes as these can artificially and unnecessarily inflate Interstate TRS Fund expenses.

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Communication Service for the Deaf (CSD) submits these reply comments in the above referenced proceeding.

I. Support for a Video Relay Service Mandate is Nearly Universal

Commenters responding to the FCC's FNPRM have come out in strong support for an FCC mandate for video relay services (VRS). In addition to the nationwide petition signed by over 5,500 individuals, virtually all consumers and providers that filed comments have demonstrated the importance of these services as means of ensuring equal access to telecommunications by people who are deaf and hard of hearing.

Although some states have raised concerns about being able to fund VRS, they will be able to do so if the FCC allows sufficient lead time for them to prepare for and authorize funding to support these services. Indeed, many states expressed similar reservations about insufficient funding prior to passage of the Americans with Disabilities Act. However, once the ADA became law and states were given time to budget for relay services, everything fell into place. Even though telephone companies

were given three years from the time of the ADA's enactment to come into compliance, the vast majority of state relay programs were up and running well before that deadline.

II. The FCC Should Swiftly Adopt an Average Speed of Answer that is Measured on a Uniform Basis

A number of commenters to this proceeding have requested the FCC to adopt an average speed of answer (ASA) that is designed to achieve functional equivalency.¹ Sorenson is the only video relay service provider to oppose elimination of the FCC's current answer speed waiver. Sorenson suggests that groups who have petitioned for functional equivalency and in particular, a low answer speed for video relay services, have acted "without regard to the negative impact to the Deaf community" because consumers cannot have video relay services and functional equivalency at the same time.² For example, Sorenson asks whether it is not better for 98% of the deaf population to be able to access VRS with long hold times than it is for 2% of the population to have VRS with short hold times.³

What is wrong with this analysis is that it is not necessary for consumers to have to choose between having inferior relay services – that fall short of the ADA's functional equivalency protections – or no relay services at all. Congress never intended for the nation's deaf consumers to have to make this choice when it issued the relay mandates of the ADA. Had that been the Legislature's intention, it simply could have allowed the many state programs which existed in the late 1980s, all of which were under-funded and under-staffed, to continue as they were, rather than directing sweeping changes to bring these services up to the level and quality of conventional voice telephone services.

¹ Comments of HOVRS; Comments of National Video Relay Service Coalition.

² Comments of Sorenson at 8.

³ *Id.* at 10.

Sorenson alleges that the reason that the FCC should extend the answer speed waiver is that there are not enough qualified interpreters to sustain a functionally equivalent answer speed requirement at this time.⁴ But in fact, this is a problem precisely because of the way that Sorenson has structured the provision of its video relay services. Sorenson is the only VRS provider to exclusively limit the use of its video equipment to its video services. Consumers that accept a Sorenson video device are asked to sign an agreement that prohibits them from using that equipment to access the services of other video relay providers.

If a provider has a closed, and therefore, very finite network of interpreters, its customers have nowhere to turn when all of its own interpreters are occupied by calls. A mandate for video relay service should ensure that the equipment and services of all video relay providers can interconnect with one another. With full interoperability, if a customer taps into a provider's network where all of the interpreters are temporarily occupied, he or she can simply turn to another provider to find an available interpreter.

Hands On Video Relay Services (HOVRS)'s comments provide a detailed analysis of the incremental number of interpreters that would be needed to effectively provide mandated VRS twenty-four hours a day. The figures presented – eight additional interpreter positions per night industry wide or eleven additional interpreter positions on a yearly basis – are realistic and, as the FCC can see, entirely manageable.⁵ HOVRS' analysis shows that once VRS is fully mandated and all VRS providers must make their services interoperable with one another, the nationwide pool of interpreters will automatically expand and offer the flexibility needed to appropriately respond to

⁴ Comments of Sorenson at 8.

⁵ Comments of Hands On Video Relay Services at 22; n.12.

consumer demands. It is the lack of provider choice, not the lack of interpreters that is holding back VRS from providing the level and quality of service that is guaranteed by the ADA.

In addition, as CSD noted in its earlier comments, any present shortage of interpreters will be ameliorated once VRS is mandated. Once this service is required and funding is made available to train and hire interpreters at fair market rates, there will be new incentives for individuals to go into the field of interpreting. As opportunities for interpreter positions and the demand for interpreter services expands, the supply of interpreters will grow to fulfill consumer needs. Extending the answer speed standard until 2008 is not only unnecessary, it would be in blatant disregard of the ADA's protections.

Just as important as a functionally equivalent ASA standard is the way that this standard is measured. Over the past year and a half, there has been considerable fluctuation in the speed with which VRS providers have answered calls. This variation has produced very uneven relay reimbursement. Although it costs providers more to provide shorter answer speeds, under present rules, providers who answer their calls more quickly are not entitled to any greater compensation because answer speed is not yet a mandated standard. In an effort to move toward ASA standardization, on September 2, 2004, CSD proposed to the FCC a uniform measurement standard by which all providers could calculate their answer speeds. CSD now incorporates this proposal into these reply comments as follows:

- A call shall be considered delivered when the VRS facility's equipment accepts it from the public IP network and an IP address is recognized by the VRS facility. The tracking of ASA shall begin at the time the call is delivered

to the VRS facility's network that distributes calls to the next available video interpreter.

- Abandoned calls shall be included in the speed-of-answer calculation.
- A VRS provider's compliance with this rule shall be measured on a monthly basis, with reporting required in daily one hour increments.
- Calls shall be answered sequentially in the order in which they are received, and video interpreters or networks cannot select or provide priority service to any particular inbound customer who may be holding or in a queue.
- Calls that are voluntarily removed from queue and later returned when hold times have improved shall be considered abandoned in measuring answer speed.

CSD urges the FCC to adopt the above measurement standard as an industry-wide guideline to achieve more equitable reimbursement of video relay services.

III. Internet-Based and Cable Modem Service Providers Should Be Required to Contribute to the TRS Fund.

The ADA states that “[c]osts caused by interstate telecommunications relay services shall be recovered from all subscribers for every interstate service. . .⁶ In order to ensure a stable and secure funding base for these services, Congress made clear that this was to include subscribers of both private and public telecommunications systems.⁷ The FCC has interpreted this mandate broadly to require interstate contributions from providers of “cellular telephone and paging, mobile radio, operator services, personal communications service (PCS), access (including subscriber line charges), alternative access and special access, packet-switched, WATS, 800, 900, message telephone service (MTS), private line, telex, telegraph, video, satellite, intraLATA , international and resale services.”⁸

⁶ 47 USC §225(d)(3)(B).

⁷ H. Rep No. 485 Part 4, 101st Cong., 2d Sess. at 67 (1990).

⁸ 47 CFR 64.604(c)(5)(iii)(A).

While the above list encompasses a variety of telecommunications services, at present, only common carriers are actually directed to contribute to the Interstate TRS Fund. As our nation's telecommunications services shift from the public switched network to the Internet, limiting contributions to the fund by only these providers will most definitely cause its erosion. CSD agrees with comments submitted by both the Ohio PUC and the California PUC that a broader range of providers must contribute to TRS support.⁹

CSD also agrees with the California PUC that the question of whether or not a provider must contribute to the TRS Fund should turn on how functionally similar its services are to telecommunications. Like facilities-based telephone companies, Internet service providers provide an essential service to the public for a fee. To the extent that Internet-enabled services are used to achieve communications that are functionally similar to or provide a substitute for those achieved via traditional telephony services, providers of these services should have to contribute to the TRS fund, whether or not they are actually classified as telecommunications providers. This should hold true regardless of the form (text, video, or voice) or the transmission media (PSTN, IP, wireless, cable, or satellite) that the provider's communications travel over. Contributions from these providers are sorely needed to sustain the Fund's viability and to distribute costs fairly among all users of communications services as we migrate away from traditional telephone services.

IV. Federal Oversight is Needed to Ensure VRS Quality

Parties who submitted comments in this proceeding differed on whether the FCC should initiate a federal certification process for Internet-based and video relay services.

⁹ Comments of Ohio PUC at 5; Comments of California PUC at 6-7.

CSD believes that whether or not the FCC requires formal certification, some level of federal monitoring over these services is critical. Although state relay programs have various built-in safeguards for consumer quality – including state advisory boards, local regulatory authorities, and the promise of having to compete for a new contract every three to five years, on the federal level, there are no formal or informal structures to monitor the quality of interstate relay services. As a consequence, consumers have no assurances that the services they are receiving at the interstate level fully pass federal muster. To the extent that Internet-based relay services remain under the jurisdiction of the federal government, CSD urges the Commission to put in place a mechanism to oversee these services for quality assurances and compliance with the Commission’s rules. One possible solution, suggested in CSD’s initial comments, is to vest the present NECA Interstate Advisory Council with this responsibility. An additional option is to use something along the lines of the detailed call audit reports recommended by Sorenson.¹⁰

V. The Ten Minute Rule Should Apply After an Appropriate Interpreter is Assigned the Call

All parties who submitted comments on the ten minute rule agree with CSD that this rule should not apply in the event that an interpreter who is better able to handle a call needs to replace an existing interpreter. However, as the California PUC noted, once an appropriate interpreter is located, the ability of that interpreter to understand the caller’s linguistic style will increase the longer that the call continues.¹¹ For this reason, CSD reiterates its request that the FCC revise the ten minute rule only to the extent needed at the start of a VRS call. Once the appropriate interpreter is located and begins

¹⁰ Comments of Sorenson at 3-4.

¹¹ Comments of California PUC at 17.

interpreting, it is in consumers' best interests for the ten minute rule to go back into effect.

VI. The NECA Advisory Council's Role Should be Expanded and its Membership Should Remain Open

Virtually all parties commenting on the NECA TRS Interstate Advisory Council supported a continuation of the Council's role as an advisory body to NECA, and many have sought an expansion of that role.¹² With respect to the Council's membership, CSD opposes Sorenson's recommendation to only choose relay providers that have provided the most minutes for a particular service during the year before the appointment period.¹³ CSD believes instead that advisory council slots for relay providers should remain open to all providers. In the past, often smaller providers, perhaps closer to their customer base, have made significant contributions to the Council's work.

CSD also wishes to support the suggestion by HOVRS that communications that take place between NECA or its Advisory Council and the FCC be made a formal part of the TRS record and subject to disclosure under the ex parte rules.¹⁴ Decisions that are made during informal phone calls or e-mail exchanges need to be added to the formal docket so that all providers are aware of their existence and effect. Keeping providers fully informed can reduce considerable confusion.

VII. The FCC Should Disallow VRS Rewards Programs

CSD has historically refrained from engaging in minute-driven sponsorships or reward programs because of the obvious questions that these practices raise with respect to the use of interstate TRS funds. These rewards programs can generate artificial

¹² See Comments of NVRSC; HOVRS, Sprint, NECA Advisory Council; Hamilton.

¹³ Comments of Sorenson at 21.

¹⁴ Comments of HOVRS at 42 n.21.

relay minutes that would not otherwise occur naturally, and put unnecessary pressures on consumers to make calls that they might not want to make. While it may be appropriate for private telecommunications companies to use rewards as incentives for customers to increase purchases when they are paying for those purchases out of their own pockets, it seems wholly inappropriate to use these rewards when payment for service minutes is coming from the general subscriber base that is administered through a federal program. The problem here is that in practice, these rewards-based programs may be forcing interstate subscribers to subsidize the costs of VRS minutes that would not have been made but for these programs.

CSD asks the FCC to disallow reward programs that require a specified level of VRS minutes in order to obtain either individual or institutional financial benefits. On the other hand, CSD does not oppose allowing providers to show appreciation to organizations that provide an opportunity to do VRS business in their locations. For example, CSD has recognized organizations, such as schools for the deaf, that have allowed us to place our equipment on their premises and make our service available to their students and faculty. Recognition has taken various sponsorship forms, such as contributions to the school or payment for high speed Internet services. The difference between these programs and those described above is that they are not tied to generating a specific number of minutes, nor is the equipment placed on the schools' premises in any way limited to CSD's services. Rather, customers that receive this equipment continue to have full freedom of choice of VRS providers, with the institutions receiving sponsorships merely for allowing us a presence on their campuses. Because equipment

use is not tied to minutes, these sponsorships do not provide incentives to artificially inflate the TRS Fund.

VIII. Conclusion

In its fund status report of October of 2004, NECA reported that VRS minutes were over the one million minute mark and exceeded projections by 95,000 minutes. The spectacular growth in these services signals the critical need for these services to become a full-fledged mandated service that meets all technically feasible functionally equivalent minimum TRS standards, including a uniformly-measured speed of answer. CSD urges the FCC to move forward in finalizing this VRS mandate, as well as in adopting measures that will ensure the continued vitality of all TRS funding. In addition, CSD urges the FCC to implement monitoring and oversight of video and other Internet-based relay services to the extent that these services remain under the federal jurisdiction.

Respectfully submitted,

/s/

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